

1 *Comm'n.*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under
2 Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint
3 does not give the defendant fair notice of a legally cognizable claim and the grounds on which
4 it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 127 S.Ct. 1955, 1964 (2007).
5 However, facts must be sufficient to edge a complaint from the conceivable to the plausible in
6 order to state a claim. *Id.* In considering whether the complaint is sufficient to state a claim,
7 the court will take all material allegations as true and construe them in the light most favorable
8 to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

9 Under Nevada law an employer will only be held vicariously liable for punitive
10 damages for the acts or omission of employees if:

11 (a) The employer had advance knowledge that the
12 employee was unfit for the purposes of the employment and
13 employed the employee with a conscious disregard of the rights
or safety of others;

14 (b) The employer expressly authorized or ratified the
15 wrongful act of the employee for which the damages are
awarded; or

16 (c) The employer is personally guilty of oppression, fraud
or malice, express or implied.

17 N.R.S. 42.007. *See also Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 257
18 (Nev. 2008). If an employer is a corporation then it can only be held vicariously liable for
19 punitive damages if the above criteria are met by an officer, director, or managing agent of the
20 corporation who is “expressly authorized to direct or ratify the employee’s conduct on behalf
21 of the corporation.” N.R.S. 42.007(emphasis added); *see also Thitchener*, 192 P.3d at 258.

22 Defendant argues that Plaintiff has failed to allege any malice by a specific employee
23 who would qualify as a managing agent with sufficient authority to expose the corporation to
24 punitive damages. Defendant also argues that Plaintiff simply states, in conclusory fashion
25 that “the conduct of defendant and its employees has been malicious, fraudulent and

1 oppressive and was designed to vex, annoy or harass Plaintiff . . .” (Complaint at 4:18-20,
 2 5:24-27, ECF No. 1.) Defendant claims that because Plaintiff simply alleges that Duane
 3 Whitaker, a manager, and Ruben Guevarra, a cook, “intermittently acted in a supervisory role
 4 over her” she has not identified an individual within the corporation who has any discretion in
 5 making decisions that determine corporate policy.

6 However, at this point this court does not know the extent of Mr. Whitaker or Mr.
 7 Guevarra’s managerial duties. The court is required to accept as true the allegations as stated
 8 in the complaint. Plaintiff has stated that they are in a supervisory role over her. Plaintiff also
 9 states very specific facts of Mr. Whitaker and Mr. Guevarra’s conduct toward her:

- 10 • On or about June 2006 Ruben Guevarra sexually assaulted Plaintiff in the
 11 workplace by placing his hands on her breasts without Plaintiff’s consent.
- 12 • Plaintiff complained about Duane Whitaker and Ruben Guevarra’s conduct
 13 to Kitchen Manager, Gerardo Gorrido, yet no corrective action was taken.
- 14 • After making complaints Plaintiff was retaliated against by Duane Whitaker
 15 and Ruben Guevarra, who intermittently acted in a supervisory role over her.
 16 Duane Whitaker falsely accused Plaintiff of not completing her work and
 sent Plaintiff home.


17 (Complaint ¶¶8-10, ECF No. 1.) Plaintiff then alleges that this conduct was done with
 18 malicious intent such that punitive damages should be awarded. (Complaint ¶¶26, ECF No. 1.)
 19 Thus the generally averred malicious intent is tied to specific conduct that is alleged in the
 20 complaint. *See e.g., Clark v. Allstate Ins. Co.*, 106 F.Supp.3d 1016, 1019 (S.D.Cal. 2000);
 21 *Mantic Ashanti's Cause v. Godfather's Pizza*, 1999 U.S. Dist. LEXIS 16675, at *18, 19, No.
 22 98-CV-2264 W (S.D. Cal. June 1, 1999). Accordingly, Defendant’s motion to strike punitive
 23 damages is denied.

24 CONCLUSION

25 **IT IS HEREBY ORDERED** that Defendant S.B. Restaurant Co. d/b/a Elephant Bar’s

1 Motion to Strike Punitive Damages (ECF No. 24) is **DENIED**.

2 DATED this 23rd day of September, 2011.

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6 Gloria M. Navarro
United States District Judge